



WASHOE COUNTY

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CM/ACM KS
Finance DN
DA ✓
Risk Mgt. DE
Comptroller MS

STAFF REPORT

BOARD MEETING DATE: November 10, 2015

DATE: October 16, 2015
TO: Board of County Commissioners
FROM: Jennifer Budge, CPRP, Park Operations Superintendent
Community Services Department, 328.2181, jbudge@washoecounty.us
THROUGH: Eric Crump, Operations Division Director
Community Services Department, 328.2182, ecrump@washoecounty.us
SUBJECT: Approve a License Agreement between Washoe County and Truckee Meadows Water Authority for the Thomas Creek Stream Gage Project; and authorize the Community Services Department Director to sign the Agreement and future amendments on behalf of Washoe County.
(Commission District 2.)

SUMMARY

If approved, this Agreement authorizes the Truckee Meadows Water Authority (TMWA) a non-exclusive revocable license to access, construct, install, and maintain a steel gage house (see photos in Agreement Exhibit A) on APN152-430-15, a portion of Arrow Creek Open Space. The purpose of this project is to monitor and record flows in the Thomas Creek stream zone. There is no expiration to the agreement, unless terminated by either party. A location map is attached as Exhibit C to the License Agreement.

Washoe County Strategic Objective supported by this item: Safe, secure and healthy communities.

PREVIOUS ACTION

None.

BACKGROUND

If approved, this Agreement authorizes the Truckee Meadows Water Authority a non-exclusive revocable license to access, construct, install, and maintain a steel gage house (see photos in Agreement Exhibit A) on APN152-430-15, a portion of Arrow Creek Open Space. The property is owned by Washoe County and managed through its Community Services Department. This project is in the vicinity of the Thomas Creek Trail system, but the trail will not be impacted by this project.

TMWA will be required to obtain all permits as required by law and will be responsible for all costs associated with installation, operations, and maintenance. There is no expiration to the agreement, unless terminated by either party.

AGENDA ITEM # 6E3

FISCAL IMPACT

No fiscal impact to the Community Services Department-Regional Parks. The cost and expense of all labor, materials, maintenance and repair of the equipment on these sites is entirely the responsibility of TMWA.

RECOMMENDATION

It is recommended that the Board of County Commissioners approve a License Agreement between Washoe County and Truckee Meadows Water Authority for the Thomas Creek Stream Gage Project; and authorize the Community Services Department Director to sign the Agreement and future amendments on behalf of Washoe County.

POSSIBLE MOTION

Should the Board agree with staff's recommendation, a possible motion would be:
"Move to approve a License Agreement between Washoe County and Truckee Meadows Water Authority for the Thomas Creek Stream Gage Project; and authorize the Community Services Department Director to sign the Agreement and future amendments on behalf of Washoe County"

LICENSE AGREEMENT
(Thomas Creek Stream Gage)

THIS AGREEMENT, made and entered into this _____ day of _____, 2015, by and between WASHOE COUNTY, a political subdivision of the State of Nevada, hereinafter referred to as (“Licensor”) and TRUCKEE MEADOWS WATER AUTHORITY, a joint powers authority entity created pursuant to a cooperative agreement among the cities of Reno, Nevada, Sparks, Nevada, and Washoe County, Nevada, pursuant to NRS Chapter 277, hereinafter referred to as (“Licensee”).

WITNESSETH:

WHEREAS, Licensor is the sole owner of the property situate in the City of Reno, County of Washoe, State of Nevada, known as Assessor’s Parcel Number 152-430-15 (the “Property”), which Licensor uses in connection with the operation of parks, trails and open space; and

WHEREAS, Licensee desires to utilize a portion of the Property to construct and maintain a Stream Gage for discharge record computations on the Thomas Creek.

NOW THEREFORE, in consideration of the mutual exchange of promises and other consideration, the receipt of which is hereby acknowledged, and the mutual covenants described herein, the parties hereto agree as follows:

1. **Grant of License.** Licensor hereby grants Licensee a non-exclusive, revocable license (the “License”) to access, construct, install, and maintain a steel gage house (see sample photos attached as Exhibit A), together with a cableway (collectively, “Stream Gage Facilities”), on a portion of the Property, more particularly described in Exhibit “B” and shown on Exhibit “C” (“License Area”), on the terms and conditions of this Agreement. Licensee represents that the steel house structure will house a solar charged, battery driven data logger system, and the structure will be painted to blend with the natural landscape and the transducer line shall be buried to hide it from sight. The small staff structure with a painted steel ruler shall be installed adjacent to the stream to visually determine the stream stage. Licensee acknowledges and agrees that use of the Property is subject to conditions of this license. Licensor’s operations shall at all times have priority over any use of the Property or License Area by Licensee, and Licensee shall not directly or indirectly use, occupy, or improve the Property or License Area or permit others to do so in any manner that impairs, impedes, or otherwise adversely affects Licensor’s use of the Property for public operations.

2. **Installation of Fencing to Secure License Area.** Licensee shall pay for the installation of fencing to secure the License Area. Licensee shall be responsible for the maintenance and upkeep of said fencing after installation.

3. **Warranty and Representations by Licensee.** Licensee acknowledges Licensor's rights to use and access the License Area shall at all times remain senior to rights of Licensee, and that there are times that the License Area will need to be utilized by Licensor. Licensor makes no representation or warranty, and shall have no obligation or liability of any kind whatsoever to any person, arising from or related to the operation and maintenance of the Property or Licensor's use of the License Area, excluding therefrom any act or negligence of Licensor.

4. **Term.** The term of this Agreement shall be perpetual unless (a) Licensee is in material default or breach of any provision hereunder, and such default or breach is not cured within sixty (60) days written notice from Licensor, or if such default or breach cannot be cured within sixty days, Licensee has failed to commence to cure such default within sixty (60) days and continuously and diligently pursues the cure of such default thereafter, or (b) either Licensor or Licensee may terminate this Agreement by providing written notice six (6) months in advance to the other party.

5. **Removal of Equipment.** Upon termination of this License, Licensee shall remove any and all materials, signage, fencing, and equipment that have been placed upon Licensor's Property, including the Stream Gage Facilities and Licensee shall return the License Area to its original condition. Should Licensee fail to remove such improvements, Licensee agrees to pay Licensor for the removal of the improvements and compensate Licensor for any damage which has accrued from Licensee's use of the License Area or failure to comply with the provisions of this Section.

6. **Permits and Laws.** Licensee shall obtain, at its sole cost, any and all permits (if any) which may be required for Licensee's use of the License Area. Licensee further agrees to comply with all applicable federal, state and local laws, rules and regulations in the operation of the License Area. Licensee agrees to indemnify and hold harmless Licensor from any and all damages, fines, or penalties resulting from Licensee's failure to obtain the necessary permits and/or failure to comply with any applicable laws, rules or regulations, or any use of the License Area by Licensee or an agent or invitee of Licensee.

7. **Limitation to Described Purpose.** The License Area may be used by Licensee solely for the uses described herein. No permanent buildings or improvements, additions, alterations, or modification of any kind, sort or nature, shall be made upon the herein Licensed Area, with the exception of the 5'x5'x8' steel house and 5'x5' concrete foundation described herein.

8. **Indemnification of Licensor and Attorney's Fees.** Licensee agrees to protect, indemnify, defend (at Licensor's option) and save harmless Licensor, against and from any and all claims, loss, damage or liability (including reasonable attorney's fees) arising from the Stream Gage Facilities, Licensees' use of or access to the Property, any breach or default on the part of Licensee pursuant to the terms of this License, any strict liability imposed on Licensee or any act or negligence of Licensee or its agents, servants or employees occurring during the term of this License, excluding therefrom claims to the

extent caused by any act or negligence of Licensor. With respect to Licensee's obligations to defend Licensor, Licensee shall defend Licensor upon notice from Licensor through legal counsel reasonably satisfactory to Licensor. Licensee agrees that Licensor's liability shall at all times be subject to the limitations set forth in Chapter 41 of the Nevada Revised Statutes (NRS), or to the extent such limitations are not applicable then Licensor's liability shall be limited by an equivalent agreed upon contractual dollar limitation to that set forth in NRS Chapter 41.

9. **Liability Insurance.** Licensee agrees to procure and maintain in force during the term of this License, at Licensee's expense, public liability insurance in companies and through brokers approved by the Insurance Commissioner of the State of Nevada and duly licensed to insure activities on the Property which names Licensor as additional insured.

10. **Condition of Premises.** Licensor does not warrant or represent that the License Area is safe or suitable for the purposes stated herein or intended to be used under the terms of this License, and Licensee agrees to accept the License Area in its "as is" condition, with all faults.

11. **Right to Enter.** It is understood and agreed that the Licensor shall have the right at any time during the term of this License to use the License Area for its own purposes and to enter in and upon the License Area to access its property, or other facilities incidental to the public utility business. Any vehicle, tools, or other equipment which blocks access to the property, where the owner cannot reasonably be contacted, will be towed at Licensee's expense.

12. **Assignability.** The License granted hereunder is a privilege granted to Licensee and is not assignable to any person or entity.

13. **Waste, Nuisance or Unlawful Activity.** Licensee shall not allow any waste beyond reasonable use and wear on the License Area, or use, or allow the License Area to be used, for any purpose prohibited by law, ordinance, rule or regulation or for any purpose which will constitute a nuisance. Licensee agrees to pay the cost of repairs beyond such reasonable wear and tear upon the License Area for damages caused by Licensee.

14. **Liens and Encumbrances.** During the term of this License, or any extension thereof, Licensee shall not place or permit the placement or suffering of any liens or encumbrances on the Property, and shall keep the Property free and clear of all liens and encumbrances arising out of any work performed, material furnished or obligations incurred by the Licensee.

15. **Maintenance and Security.** Licensee agrees to maintain the License Area at the Licensee's expense and to remove any litter, waste, or construction refuse that may accumulate on the Property as a result of Licensee's use. Licensee, at its cost, agrees to maintain and repair its equipment, improvements, including the fencing around the

improvements, and Stream Gage Facilities in clean and proper working condition. Licensee shall be solely responsible for all security of the Stream Gage Facilities, and notwithstanding any provision herein to the contrary, Licensor shall have no obligations or liability whatsoever for any damage, theft, or destruction to the Stream Gage Facilities Licensee's property caused by third parties.

16. **Entire Agreement.** This document embodies the entire understanding of the parties as to the License that is the subject matter hereof, and there are no terms, covenants or conditions of such License other than those set forth herein. This License may be amended only by a document in writing, executed by both parties with the same formality as this instrument.

17. **No Waiver.** No waiver of any breach or breaches of any provision hereof shall be construed to be a waiver of any proceeding or succeeding breach of said provision or any provisions hereof.

18. **Notices.** All notices herein provided to be given, or which may be given, by any party to the other, shall be deemed to have been fully given when served personally on Licensor or Licensee, or when made in writing and deposited in the United States mail, certified and postage prepaid, and addressed as follows:

Licensor: Washoe County
 Director, Community Services Department
 P.O. Box 11130
 Reno, NV 89520

Licensee: Truckee Meadows Water Authority
 Natural Resource Department
 P.O. Box 30013
 Reno, Nevada 89520

IN WITNESS WHEREOF, the Licensee has signed this License Agreement and Licensor has executed the same by its duly authorized officer the day and year first above written.

<p>LICENSOR: WASHOE COUNTY, a political subdivision of the State of Nevada By: _____ Name: _____ Title: _____</p>	<p>LICENSEE: TRUCKEE MEADOWS WATERAUTHORITY By: _____ Mark Foree, General Manager</p>
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EXHIBIT "A"



EXHIBIT "B"

Said Stream Gage to be located in the County of Washoe, State of Nevada, at the following described property:

- Legal Description: S27 T18N R19E
- Gage house location 39.392478 latitude
119.835533 longitude, referenced to North American Datum of 1983.

APN: 152-430-15

EXHIBIT "C"

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LEGEND



THOMAS CREEK STREAM GAGE
 APN: 152-430-15
 T18N R19E S27
 EXHIBIT C

DATE	10/14/2015
MAP BY:	JK
REQUESTED BY:	LK
SCALE:	1 inch equals 400 feet

